

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUDY SIMENTAL,
Plaintiff,
v.
NANCY ADAMS, et al.,
Defendants.

Case No. [17-cv-00801-SI](#)

**ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

Re: Dkt. No. 38

Plaintiff has filed a second request for appointment of counsel to represent him in this action. Docket No. 38. A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915(e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident at this time. Plaintiff states that he is disabled, but the form attached to the request shows his disability is a mobility related disability, e.g., he uses a walker and, when there are more than six stairs, he is supposed to take an elevator. Docket No. 38 at 11. The limits on his mobility do not present an exceptional circumstance requiring appointment of counsel. His other arguments also do not persuade the court that appointment of counsel is necessary, as he describes circumstances common to almost all prisoner litigation about medical care in prison (e.g., difficulties in investigating the claim, need for discovery, need to prepare for jury trial, and desire to hire an expert). Plaintiff has been able to adequately articulate his claims, and the court is unable to

1 evaluate the likelihood of success on the merits on the record before the court. The request for
2 appointment of counsel is DENIED. Docket No. 38.

3 Plaintiff is reminded that attendance and participation in the upcoming settlement
4 conference proceedings is mandatory. *See* Docket No. 33 at 2.

5 **IT IS SO ORDERED.**

6 Dated: March 2, 2018



SUSAN ILLSTON
United States District Judge